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EXAMINER

21M1/0228

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| ART UNIT | PAPER NUMBER |
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DATE MAILED: 02/28/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 2/7/96 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), No days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☒ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____.

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-22 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-22 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

1. The restriction requirement has been overcome by the applicant's traverse.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 20 is rejected under 35 U.S.C. § 102(b) as being anticipated by Fabian ('095). Fabian discloses the claimed invention including a RF tag attached to a surgical sponge (Col. 3, ln. 64 to col. 4, ln. 16; Col. 5, ln.s 23-63; Col. 7, ln.s 30-36).

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> *A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.*
>
> *Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.*

5. Claims 1-14 are rejected under 35 U.S.C. § 103 as being unpatentable over Nosek in view of Sheehan, Cheesman et al, Fabian, Ghaem, and Ruiz et al. Nosek discloses an

apparatus for counting the number of, and determining the amount of blood contained within, surgical sponges (Col. 1, ln.s 33-50; Col. 4, ln.s 28-49) including a container (7) for holding used surgical sponges, detecting means (Col. 2, ln.s 3-13; Col. 4, ln.s 11-27), display means (Col. 6, ln.s 26-32), determining means for determining the dry weight of a sponge (Col. 3, ln.s 43-49; Col. 5, ln.s 42-60; Col. 7, ln.s 10-29), and weighing means (Col. 4, ln.s 2-10). Nosek discloses the claimed invention except for the second display means, the RF non-optical scanning means, the disposable plastic bag, the alarm for signaling when the container is full, the use of battery power, and the alarm for determining when the battery is low. Sheehan teaches that it is known to use more than one display in a blood loss calculating scale in order to display more than one type of information at a time (Col 2, ln.s 20-48). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use more than one display in the blood loss calculating scale of Nosek, as taught by Sheehan, in order to display more than one type of information at a time.

Cheesman et al teach that it is known to use a disposable plastic bag in a blood loss calculating scale in order to allow for quick, easy, sanitary disposal of the bloody sponges (Col. 7, ln.s 22-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a disposable plastic bag in the scale of Nosek, as taught by Cheesman et al, in order to allow for quick, easy, sanitary disposal of the bloody sponges.

Fabian discloses a RF tag attached to a surgical sponge (Col. 3, ln. 64 to col. 4, ln. 16; Col. 5, ln.s 23-63; Col. 7, ln.s 30-36). Ghaem et al teach that it is known to encode information about an attached article into a RF tag in order to allow accurate inventory

control (Col. 1, ln.s 37-62). Because Nosek discloses that any form of conventional identifying means can be attached to his sponges, it would have been obvious to one having ordinary skill in the art at the time the invention was made to encode the RF tag of Fabian with information about the attached sponge, as taught by Ghaem et al, in order to allow accurate inventory control in the apparatus of Nosek.

Ruiz et al teach that it is known to signal an alarm if the rate of fluid loss/gain from a patient exceeds a certain amount (Col. 5, ln.s 5-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to signal when the fluid loss calculated by the apparatus of Nosek exceeds a certain level in order to alert the medical staff of the patient's condition.

Nosek does not disclose the use of batteries or the low battery alarm. It would have been an obvious matter of design choice to power the device of Nosek with batteries and to provide a low battery alarm, since applicant has not disclosed that using batteries solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with batteries or an A/C source.

6. Claims 15-19, 21, and 22 are rejected under 35 U.S.C. § 103 as being unpatentable over Fabian ('095) in view of Ghaem et al. Fabian discloses a RF tag attached to a surgical sponge (Col. 3, ln. 64 to col. 4, ln. 16; Col. 5, ln.s 23-63; Col. 7, ln.s 30-36). Fabian discloses the claimed invention except the tag does not contain information about the attached

sponge, and the physical dimensions of the tag are not specified. Ghaem et al teach that it is known to encode information about an attached article into a RF tag in order to allow accurate inventory control (Col. 1, ln.s 37-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to encode the RF tag of Fabian with information about the attached sponge, as taught by Ghaem et al, in order to allow accurate inventory control.

Fabian does not disclose the physical dimensions of his RF tag. It would have been an obvious matter of design choice to any conventional RF tag with any desired dimensions, since applicant has not disclosed that the size of the tag solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any conventionally sized RF tag.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baker shows an apparatus similar to the applicant's claims.

8. Any inquiry concerning this communication should be directed to R. Gibson at telephone number (703) 308-1765.

PETER S. WONG
SUPERVISORY PATENT EXAMINER
GROUP 2100

Gibson RWG
February 13, 1996